Federal Communications Commission
Washington, D.C. 20554

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Re: Application for Construction Permit
Channel 20, Idaho Falls, Idaho
File No. BPCT-19950306KF
Facility ID No. 41238

Dear Counsel:

This is in regard to a petition for reconsideration filed by The Post Company ("Post") on August 21, 2003 in connection with the above-captioned application of Meridian Communications of Idaho, Inc. ("Meridian") for a construction permit for a new television station on Channel 20, Idaho Falls, Idaho. Meridian and Sunbelt Communications Company ("Sunbelt") filed oppositions on September 4, 2003, and Post filed a consolidated reply on September 15, 2003.

Petition. Post objects to the Video Division's July 22, 2003 grant of the above-captioned application and seeks reconsideration.[1] In a petition to deny the application, Post had argued that Sunbelt is the real-party-in-interest behind Meridian, pointing out that James Rogers, the single majority shareholder of Sunbelt, is the father of Meridian's principals. In the petition to deny, Post also alleged that Meridian did not demonstrate in its application that it was financially qualified and that it falsely certified as to its financial qualifications. Post points out that the application relied upon "purveyor financing" for most of its funds but stated that equipment vendors had not yet been contacted.

In seeking reconsideration, Post claims that the *Letter Decision* allowed Meridian to demonstrate its

[1] *See Letter to Meridian Communications of Idaho, Inc. from Barbara A. Kreisman, Chief, Video Division,* (July 22, 2003) ("*Letter Decision*"). The *Letter Decision* also granted a Joint Request for Approval of Global Settlement filed by Meridian and Flat Iron Ranches, Inc., and dismissed the latter's application.

financial qualifications through an amendment to its application despite Commission precedent requiring an applicant to demonstrate its financial qualifications in its original application or show that it had reasonable assurance of financing at the time of certification. Post maintains that an applicant cannot amend its financial proposal without first establishing that the applicant was financially qualified at the time of certification. Because the application relied upon financing from equipment suppliers which had not yet been contacted, Post contends, Meridian did not have reasonable assurance of financing and was therefore not financially qualified. Moreover, Post argues that even if Meridian had been allowed to amend on June 6, 1995, its September 19, 1996 amendment substituting yet another financing source proves that it did not have reasonable assurance of funding even on June 6.

In opposition, Meridian maintains that the *Letter Decision* correctly observed that, under Commission rules in effect at the time, specifically Section 73.3522, Meridian was entitled to file a financial amendment as a matter of right up to thirty days after the last filed competing application was placed on public notice (known as the "B" cut-off list).[2] Meridian points out that its June 6, 1995 amendment was filed within that time period, as well as two weeks before Post ever raised the financial issue. Meridian terms the cases cited by Post as inapposite because they involve financial certification issues raised in the course of comparative hearings where applicants had failed to file corrective amendments as a matter of right. Meridian also indicates that it based its belief in the availability of purveyor financing at the time of certification on the prior opinion of a professional broadcast consultant who had advised that such financing would be available.

Post replies that the ability to amend the application does not erase the requirement that an applicant have a reasonable assurance of funding at the time of certification. Post compares *62 Broadcasting, Inc.*[3] (applicant which knew it did not have reasonable assurance of transmitter site at time it filed its application - certification page stated "negotiations are in process" - could not cure fatal defect by amending as a matter of right on "B" cut-off date to specify a new site) with *Great Lakes Broadcasting, Inc.*[4] (applicant permitted to amend to new site as a matter of right where it reasonably believed it had assurance of proposed site when it certified - specific rental terms were discussed and applicant followed up on initial contact by non-voting shareholder). In addition, Post cites another case dealing with transmitter site availability, *Global Information Technologies, Inc.*[5]

According to Post, reconsideration is also warranted because the *Letter Decision* ignores its own finding that the president of Meridian, Suzanne Rogers, continued to provide legal representation to Sunbelt, and arbitrarily dismisses the real-party-in-interest issue. First, Post maintains that the *Letter Decision* was wrong in relying upon Suzanne Rogers' broadcast experience to counter the real-party-in-interest allegations. According to Post, Ms. Rogers' only broadcast experience is prosecuting the instant application and other legal representation and not experience in running a broadcast facility. Moreover, Post contends that it is clear that Suzanne Rogers is not a broadcaster because she stated that she owns a successful law practice.

Next, Post claims that the *Letter Decision* erred in relying on a previous Video Services Division decision to support the conclusion that the relationship between Meridian and Sunbelt does not raise a real-party-

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[2] 47 C.F.R. 73.3522 (former version).

[3] 4 FCC Rcd 1768, 1771-73 (Rev. Bd. 1989), *rev. denied*, 5 FCC Rcd 830 (1990).

[4] 6 FCC Rcd 4331, 4332 (1991), *aff'd*, 8 FCC Rcd 4007, 4008 (1993).

[5] 12 FCC Rcd 11808 (1997).

in-interest issue.[6] According to Post, the previous decision was based on Meridian's statement that Suzanne Rogers had ceased her legal representation of Sunbelt, whereas Post showed that such legal representation had continued. Post maintains that the *Letter Decision* dismisses this issue, stating, without explanation, that "under these circumstances" Ms. Rogers' continued legal representation does not raise an issue that her father, Sunbelt's principal, is the real-party-in-interest.

In its opposition, Meridian argues that Post's petition ignores the evidence regarding Suzanne Rogers' ownership and involvement in Station KMTF(TV), Helena, Montana; Station KVBC(FM), Las Vegas, Nevada; and her several years' experience prosecuting broadcast applications before the Commission, including the successful grant and establishment of Station KMCC-TV, Laughlin, Nevada. In addition, Meridian opines that the reason for the staff's dismissal of arguments that Ms. Rogers' legal representation of Sunbelt did not raise a real-party-in-interest issue is clear in the staff's decision. That reason, according to Meridian, is that the staff found that Ms. Rogers, as well as her brother and sister, had demonstrated her independence from their father. This finding, Meridian contends, was based on sworn declarations of Ms. Rogers and her father that neither had an ownership interest nor management role in either of the other's businesses. The record shows, Meridian maintains, that Ms. Rogers and her siblings are fully independent of their father and that they pursue their own professional and independent business goals.

Sunbelt opposes the petition for reconsideration in general terms. It contends that the petition is nothing more than a reargument of allegations already considered.

In reply, Post states that Meridian's opposition never refutes its argument that Suzanne Rogers' alleged broadcast experience is limited to prosecuting applications and other legal representation that the Commission does not recognize as constituting broadcast experience. Post goes on to maintain that Meridian's claims of Suzanne Rogers' broadcast experience actually demonstrate the interrelationship between Sunbelt and Meridian because Sunbelt has an attributable interest in every station for which Ms. Rogers claims broadcast experience. Finally, Post states that it is perplexed by Meridian's statement that Post ignores the letter decision of September 29, 1995 when Post's petition argues that the *Letter Decision* erred in its reliance on the 1995 letter.

Discussion. We will deny the petition for reconsideration. We have considered all of the arguments in the petition for reconsideration and we continue to believe that our *Letter Decision* was correct.

As we found there, under Commission rules in effect at the time when Meridian filed its application, it had the right to file a minor amendment, such as an amendment of the financial certification portion of its application, as a matter of right as long as such an amendment was filed no later than thirty days after the last filed competing application was placed on public notice (known as the "B" cut-off list). Meridian's amendment was filed within that time period. Only if it had been filed later would Meridian have been required to show good cause for its acceptance. In its petition for reconsideration, Post cites a number of cases for the proposition that an applicant cannot amend its financial proposal without first establishing that the applicant was financially qualified at the time of certification. Those cases, however, are inapposite because none concerns an amendment as a matter of right.

As pointed out above, in its reply Post cites *62 Broadcasting, Inc.* and compares it with *Great Lakes Broadcasting, Inc.* Both cases dealt with certification of transmitter site availability where the Commission's requirements for reasonable assurance are different than those for financial certification. In

[6] Post cites *Letter to Ambassador Media Corporation from Barbara A. Kreisman, Chief, Video Services Division* (September 29, 1995).

any case, *Great Lakes Broadcasting, Inc.* notes that an amendment as of right has mooted any deficiency in the applicant's reasonable assurance. In affirming that result, the Commission distinguished *62 Broadcasting, Inc.* because in *62 Broadcasting, Inc.* the applicant admitted that her proposed site had never been available and the admitted false certification was made only for the purpose of complying with the filing deadline.[7] The Commission observed that, in *Great Lakes Broadcasting, Inc.*, by contrast, the applicant reasonably believed that she had assurance of the availability of the transmitter site. The Commission allowed the curative amendment.[8]

We believe that the facts in the instant case are closer to those in *Great Lakes Broadcasting, Inc.* than those in *62 Broadcasting, Inc.* There is no indication here that the purveyor financing relied upon by Meridian when it certified its financial qualifications was knowingly not available to it. Although it is far from clear that assurances of a professional broadcast consultant that purveyor financing would be available constitute reasonable assurance as a legal matter, it is apparent that Meridian reasonably believed it had such assurance and there is no evidence to the contrary. Importantly, Meridian did not conceal any facts in its application, stating therein that no purveyors had yet been contacted. In *62 Broadcasting, Inc.*, by contrast, the applicant indicated that negotiations were in progress when, in fact, the site owner had failed to make the site available and no negotiations were occurring at the time. Similarly, in *Global Information Technologies, Inc.* another transmitter site availability case cited by Post, the applicant had been told that the site he wanted was "spoken for", and, thus, its belief in the site's availability was without any basis.[9]

Thus, we find that Commission precedent supports acceptance of Meridian's curative amendment. Accordingly, Meridian was able to amend as a matter of right on June 6, 1995, and this amendment mooted the issue of its financial qualifications. Moreover, we do not agree with Post that the subsequent amendment filed by Meridian on September 19, 1996 proves that it did not have reasonable assurance of funding on June 6, 1995. In the absence of any other evidence that Meridian lacked reasonable assurance on June 6, 1995, this argument is based on nothing but speculation.

We also believe that the *Letter Decision* correctly decided the real-party-in-interest issue. The Commission has repeatedly noted that where, as here, family members are involved, "a petitioner attempting to raise a real-party-in-interest issue has a heavy burden, because even independent family relationships may have financial or business ties which would be persuasive indicia of common ownership or real-party status in non-family situations."[10] At the same time, the Commission has a legitimate concern as to compliance with the ownership rules and, therefore, when family members are involved, such family members have the burden of showing in their applications that the broadcast interests of the family members will be independently owned and operated.[11] Thus, we require applicants to fully disclose the nature of their familial interests so that we can determine whether these interests are commonly owned or subject to common influence or control.[12] Our inquiry is necessarily fact based and

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[7] 8 FCC Rcd at 4008.

[8] *Id.*

[9] Post cites the Commission decision in the case, 12 FCC Rcd 11808 (1997). Details regarding the conversation between the applicant and the agent for the site owner are found in the Review Board decision, 8 FCC Rcd 4024, 4028 (Rev. Bd. 1993), *recon. denied,* 8 FCC Rcd 6629.

[10] *Kern Broadcasting Corporation,* 10 FCC Rcd 6584, 6585-86 (1995). *See also* cases and authorities cited therein.

[11] *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920, 1922 (1992).

[12] *Id.*

focused on indicia of influence and control.[13]

In *Clarification of Commission Policies Regarding Spousal Attribution,* the Commission enumerated the following factors as relevant: 1) representations that the media interests of close family members will be independent and will not be subject to common influence or control; 2) commingling of ownership or other interests in media businesses; 3) participation by family members in the financial affairs, programming, and personnel decisions of each other's media interests; 4) prior broadcast experience of the individual seeking to establish independent interests; 5) financial independence; 6) sharing of personnel, equipment, contractors or information regarding programming; and 7) involvement of family members in the acquisition or application process.[14] We analyzed the above-captioned application using this guidance and concluded that neither Sunbelt, nor its principal, James Rogers, were shown to be real-parties-in-interest in Meridian, whose principals are James Rogers' children.

In its petition for reconsideration, Post challenges our *Letter Decision* on two grounds. First, Post claims the *Letter Decision* incorrectly relied upon Suzanne Rogers' broadcast experience because that experience is limited to prosecuting the instant application and other legal representation and not experience running a broadcast facility. As Meridian points out, however, Ms. Rogers has ownership and involvement in two existing stations. We believe we correctly relied upon her broadcast experience in the *Letter Decision*. While Post is correct that Sunbelt has an attributable interest in these stations, we do not believe that fact changes our conclusion.[15] Following the Commission's guidance in *Clarification of Commission Policies Regarding Spousal Attribution*, our focus in this analysis is the degree to which the alleged real-party-in-interest is in a position to control or influence the licensee. With this in mind, it becomes clear that the factor regarding broadcast experience is intended to determine whether the licensee principal is or will be a serious broadcaster and not just a front for the alleged real-party-in-interest. Suzanne Rogers' broadcast experience shows that she is a serious broadcaster and broadcast applicant. The fact that she also owns a successful law practice is immaterial.

Secondly, Post maintains that the *Letter Decision* erred in relying on a previous Video Services decision, arguing that the earlier decision was based on Meridian's statement that Suzanne Rogers had ceased her legal representation of Sunbelt and pointing out that such legal representation continued.[16] In our *Letter Decision* we referred to our earlier decision, indicating that the issue of Sunbelt as the real-party-in-interest in Meridian had been previously decided in Meridian's favor. We acknowledged in the *Letter Decision* Suzanne Rogers' alleged continued representation of Sunbelt and concluded that it did not raise a real-party-in-interest issue. As we made clear there, based on our analysis of the totality of circumstances, such representation did not show that Sunbelt is the real-party-in-interest in Meridian.

In our analysis of whether a family member's media interests should be attributed we attach a great deal of importance to statements and declarations that show that such media interests are independently held

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[13] *Id.*

[14] *Id.*

[15] *See Clarification of Commission Policies Regarding Spousal Attribution,* at n. 19, citing *Southern Indiana Broadcasters, Inc.*, 14 RR 117 (1956), for the proposition that experience gained at a family owned media company is not necessarily indicative of common influence or control.

[16] *Letter to Ambassador Media Corporation from Barbara A. Kreisman, Chief, Video Services Division* (September 29, 1995).

and not subject to common influence and control.[17] Here we have declarations by the family members involved that their media interests are independent and we have no evidence to refute those representations. Specifically, Suzanne Rogers submitted a sworn affidavit outlining her and her siblings' independent businesses and their independence from their father. James Rogers' sworn affidavit states that he is not an officer, director or shareholder in Meridian, any of its subsidiaries, or any other broadcast venture of his children. Likewise, he states that his children are not officers, directors or shareholders of Sunbelt. James Rogers' affidavit also represents that, although he uses Suzanne Rogers as one of his attorneys, he makes all business decisions for Sunbelt. He states that Suzanne Rogers' representation has been limited to drafting application forms, exhibits and amendments and that she has not made substantive decisions regarding those applications. In short, it cannot be assumed that Suzanne Rogers has any influence or decision making role in Sunbelt by virtue of her legal representation any more than any attorney can be said to control the business decision of his or her client. The Rogers family has not denied their close business ties and such business ties are not uncommon in family relationships. They do not, standing alone, evidence that one family member is the real-party-in-interest in another's business.[18] Here, we have analyzed all of the facts and circumstances and conclude that Post has not raised a substantial and material question of fact that Sunbelt or its principal is the real-party-in-interest in Meridian.

Having considered the matters raised in Post's petition for reconsideration we conclude that reconsideration of the grant of the above-captioned application (File No. BPCT-19950306KF) is not warranted. Accordingly, the petition for reconsideration IS DENIED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Flat Iron Ranches, Inc.
c/o William Fitz, Esq.

Idaho Independent Television, Inc.
c/o John R. Feore, Jr., Esq.

Compass Communications of Idaho, Inc.
c/o Howard M. Weiss, Esq.

Pocatello Media Group

[17] *See, e.g., Music Broadcasting, Inc.*, 16 FCC Rcd 5678 (2001); *Sevier Valley Broadcasting. Inc.*, 10 FCC Rcd 9795 (1995). *See also, Clarification of Commission Policies Regarding Spousal Attribution* at 1920.

[18] *See generally, Clarification of Commission Policies Regarding Spousal Attribution*.